UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BETTY HAMAL and JOHN HAMAL,	)	
	)	
Plaintiffs,	)	Case No.
	)	
v.	)	
	)	
SETERUS, INC.,	)	Jury Trial Demanded
	)	
Defendant.	)	

COMPLAINT

Plaintiffs BETTY HAMAL and JOHN HAMAL (collectively, "Plaintiffs"), by and through their undersigned counsel, alleges the following causes of action against defendant SETERUS, INC.:

Nature of Action

1. Plaintiffs bring this cause of action seeking redress for violations of the Federal Debt Collection Practices Act ("FDCPA") pursuant to 15 U.S.C. § 1692, et seq. and the Federal Credit Reporting Act ("FCRA") pursuant to 15 U.S.C. § 1681, et seq.

Jurisdiction and Venue

2. Subject matter jurisdiction is conferred upon this Court by 28 U.S.C. § 1331 and § 1337, as the action arises under the laws of the United States.

3. Venue is proper in this district as Plaintiffs reside in this district and Defendant's conduct harmed Plaintiffs in this district.

Parties

4. Plaintiffs are individuals who, at all relevant times, owned the real property located at 4111 West Lake Avenue, Glenview, IL 60025 (the "Property").

5. Plaintiffs are "consumers" as defined under the FDCPA, 15 U.S.C. § 1692(a)(3).

6. Defendant Seterus is a Delaware corporation with its principal place of business at 14523 SW Millikan Way, Beaverton, Oregon 97005. Seterus is a loan servicing company which services loans across the country, including in Illinois.

7. Defendant is a "debt collector" as defined under the FDCPA, 15 U.S.C. § 1692(a)(6) because it regularly uses the mail and telephone to collect, or attempt to collect, any delinquent consumer debts.

8. At all relevant times, Defendant was attempting to collect on a consumer debt as defined under 15 U.S.C. § 1692(a)(5).

Facts

9. In 2010, Plaintiffs granted a mortgage on the Property to Bank of America ("BoA"). At that time, and for some period thereafter, BoA serviced the debt and assigned it Loan No. XXXXX3394.

10. In 2014, Plaintiffs would make monthly payments to BoA for two separate accounts, one to Loan No. XXXXX3394, and another payment related to a condominium property. In early 2014, an error was made by BoA when it applied the payment Plaintiffs made for the condominium property loan to Loan No. XXXXX3394. This resulted in what BoA considered to be a delinquency in the condominium property account, and a surplus payment in the account for Loan No. XXXXX3394.

11. Plaintiffs disputed any delinquency in the condominium property account, and had repeated communications with BoA to resolve the issue. On October 31, 2014, counsel on behalf of Plaintiffs advised BoA that she was authorized by Plaintiffs to speak with the Bank on their

behalf. (Attached here as Exhibit A is a true and correct copy of the correspondence from attorney Eileen Rosen dated October 31, 2014).

12. On or around September 30, 2014, BoA transferred the servicing rights to Loan No. XXXXX3394 to defendant Seterus, who assigned it Loan No. XXXX6331. (For clarity purposes, the loan will now be referred to as Loan No. XXXX6331.).

13. In early 2014, due to an error and miscommunication between Plaintiffs and the bank, BoA paid real estate taxes on the condominium property although taxes were not escrowed through the account. At the same time, Plaintiffs paid their property taxes on the condominium property, as was their custom. Additionally, due to an error and miscommunication between Plaintiffs and the bank, BoA also paid real estate taxes on the subject Property, although taxes were not escrowed through the account. Plaintiffs paid BoA for the mistaken payment of taxes. Due to the error in payment of taxes, when Loan No. XXXX6331 was transferred to Seterus it was considered to be delinquent.

14. The statements received by Plaintiffs from Seterus in October, 2014, and thereafter, indicated that Plaintiffs were delinquent. Plaintiffs disputed that their account was delinquent based on the fact that taxes were wrongfully paid. The taxes were resolved by Plaintiffs by December, 2014.

15. In May of 2015, BoA corrected its previous accounting error and deducted the surplus payment made to Loan No. XXXX6331 and rightfully applied it to Plaintiff's "delinquent" condominium property account.

16. When BoA deducted the payment made to Loan No. XXXX6331 to apply it to the condominium property loan, Seterus again considered Loan No. XXXX6331 to be delinquent, although that amount was a surplus payment.

17. Seterus notified Plaintiffs of their purported delinquency on their next monthly statement. Additionally, Plaintiffs began receiving repeated phone calls demanding that they resolve the default in payments.

18. Plaintiffs immediately disputed the delinquency and explained that all monthly payments were current on Loan No. XXXX6331. In addition, in June and July 2015, a representative of BoA sent correspondence to Seterus regarding the background of the accounting error and reiterated that Plaintiffs were not in default. (Attached here as Group Exhibit B are true and correct copies of the correspondence dated June 23, 2015 and July 22, 2015 from BoA to Seterus).

19. Despite Plaintiffs' (and BoA's) explanations, Seterus did not rectify its account and continued showing Plaintiffs' account as delinquent. And, the dunning continued. Plaintiffs received repeated phone calls from Seterus seeking payment on the purported debt until November, 2015.

20. Seterus also applied late charges and property inspection charges against the account, even though the account was never delinquent and there was no basis for such charges.

21. Seterus continued to show Plaintiffs' account as delinquent and never corrected its mistake. When the Property was eventually sold in December, 2015, Seterus subsequently sent Plaintiffs a refund which evidences that the loan was never delinquent. (Attached here as Exhibit C is a true and correct copy of the correspondence dated February 15, 2016 from Seterus to Plaintiffs).

22. Despite there being no basis for believing Plaintiffs' loan was delinquent, Seterus reported the delinquency to credit reporting agencies.

23. Plaintiffs' credit was negatively impacted by Seterus' reporting. When shopping for a mattress during the relevant time frame, Plaintiffs were advised that their credit score had decreased based on the purported default on the subject account.

24. Plaintiffs suffered from anxiety and confusion because they had proof that they were current on their loan, but Seterus insisted they were delinquent and would not stop its collection attempts. It progressed to the point where BoA initiated a mortgage foreclosure action against Plaintiffs in connection with the condominium property. While the foreclosure action was resolved, it added to the anxiety Plaintiffs experienced as they believed a foreclosure action could be initiated in connection with the subject Property as well, since Seterus insisted they were in default.

25. Plaintiffs have expended time and incurred attorney's fees as a result of Seterus' actions.

COUNT I
VIOLATIONS OF THE FAIR DEBT COLLECTIONS PRACTICES ACT

26. Plaintiffs repeat and re-allege paragraph 1-25 above as though fully set forth herein.

27. Plaintiffs are "consumers" under 15 U.S.C. § 1692(a)(5) because the loan was made for personal, family, and household purposes.

28. Seterus is a "debt collector" for purposes of the FDCPA because it collects debts "owed or due or asserted to be owed or due another." 15 U.S.C. § 1692(a)(6). At all times, the Note and Mortgage related to the subject Property was owned by, and the debt was owed to, BoA.

a. Violation of § 1692c(a)(2)

29. Seterus had actual knowledge that Plaintiffs were represented by counsel based on the letter sent on September 23, 2014. Notwithstanding, Seterus continued to communicate directly with Plaintiffs by issuing telephone calls, and monthly statements.

b. Violation of § 1692e(2)(A)

30. Seterus had actual knowledge that Plaintiffs were not delinquent on their account and owed no payment, late charge, or fees. Notwithstanding, Seterus repeatedly contacted Plaintiffs and made false representations as to the amounts purportedly owed.

WHEREFORE, plaintiffs Betty Hamal and John Hamal respectfully request that this Honorable Court:

a. enter judgment in their favor and against Seterus, Inc.;

b. declare that the practices complained of herein are unlawful and violate the aforementioned statute;

c. award Plaintiffs statutory and actual damages, in an amount to be determined at trial, for the underlying FDCPA violations;

d. award Plaintiffs costs and reasonable attorney's fees as provided under 15 U.S.C. § 1692k; and

e. award any other relief as this Honorable Court deems just and appropriate.

COUNT II
VIOLATION OF THE FAIR CREDIT REPORTING ACT

31. Plaintiffs repeat and re-allege paragraph 1-25 above as though fully set forth herein.

32. Plaintiffs are "consumers" pursuant to 15 U.S.C. § 1681a(c).

33. Seterus is a "person" pursuant to 15 U.S.C. § 1681a(b).

a. Violation of 15 U.S.C. § 1681s2(a)(1)(A)

34. Seterus had actual knowledge, or had reasonable cause to believe, that Plaintiffs were not delinquent on their account and owed no payment, late charge, or fees. Notwithstanding, Seterus reported to credit agencies that Plaintiffs were delinquent on Loan No. XXXX6331.

WHEREFORE, plaintiffs Betty Hamal and John Hamal respectfully request that this Honorable Court:

a. enter judgment in their favor and against Seterus, Inc.;

b. declare that the practices complained of herein are unlawful and violate the aforementioned statute;

c. award Plaintiffs statutory and actual damages, in an amount to be determined at trial, for the underlying FCRA violations;

d. award Plaintiffs costs and reasonable attorney's fees as provided under 15 U.S.C. § 1681n; and

e. award any other relief as this Honorable Court deems just and appropriate.

Respectfully submitted,

BETTY HAMAL and JOHN HAMAL,

By: _s/ Eileen E. Rosen_________
One of their Attorneys

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